

Testimony of Abraham Scarr, Director

Connecticut Public Interest Research Group (ConnPIRG)

in support of

Proposed House Bill No. 6173:

An Act Concerning the Reform of Debt Collection Practices in the State

Chairperson Tong, Chairperson Leone and Members of the Committee: My name is Abe Scarr and I am the Director of the Connecticut Public Interest Research Group (ConnPIRG). Thank you for the opportunity to testify today in support of Proposed House Bill No. 6173: An Act Concerning the Reform of Debt Collection Practices in the State.

With my testimony today I am submitting proposed bill language to strengthen consumer protections and limit abusive practices of so-called "debt buyers." Debt buyers purchase debts from other creditors, oftentimes for pennies on the dollar. Because debt buyers then own the debt, they are not collection agencies covered by Consumer Collection Agency Act but rather creditors as covered by the Creditor's Collection Protection Act. It is important to note that debt buyers are already covered by the Creditor's Collection Protection Act, and that this bill language simply clarifies that while strengthening consumer protections.

We have drafted this bill language with the help and input of other consumer advocacy organizations and consumer lawyers, and, as you will hear today, the language has the support of many consumer advocates and members of the General Assembly.

The provisions in the bill language strengthen long-standing and fundamental legal principles, including having standing to sue, observing the statute of limitations, giving fair notice of a lawsuit to defendants, and being able to prove claims with valid documentation and admissible evidence.

Problems with the debt buying industry have been increasingly recognized in recent years, as has been reported on by the Wall Street Journal, Los Angeles Times, and American Banker. North Carolina and Maryland were the first states to implement reforms similar to those we are introducing today, and states such as Washington, Oregon, New Jersey, New Hampshire and Minnesota are considering similar reforms this year. In 2010, the Federal Trade Commission concluded that debt collection legal system was broken. Among other problems, the FTC found that complaints filed by debt buyers in collection lawsuits rarely contain sufficient information to allow consumers to admit or deny the allegations or raise affirmative defenses. A subsequent FTC report released just last month reiterates these concerns - highlighting the fact that the accuracy of the accounts and information that debt buyers purchase are

not guaranteed and that those purchased accounts rarely come with documentation sufficient for bringing lawsuits.

Debt buyers often present poor documentation of the debts they are attempting to collect, fail to give defendants appropriate notice, and attempt to collect from the wrong person, or for the wrong amount, or past the statute of limitations.

Our bill is a measured attempt to stop such abuses of our legal system. Its main provisions require that creditors provide 30 days notice to defendants before filing suit and that they be able to document their debts before filing suit or being awarded a judgment. Such documentation includes a contract or written evidence of the original debt, an itemized accounting of the amount sought including charges imposed by the debt buyer, documentation that the plaintiff is the owner of the debt, and documentation that the statute of limitations for collecting the debt has not expired.

If you are in the business of owning and collecting debts, you should be able to prove that you own the debt, and that the debt is valid. These are not onerous requirements.

Other provisions of the bill language include clarifying that partial payment of a debt does not extend or renew the statute of limitations. It also gives judges more latitude to grant awards to defendants when debt buyers file suit without the proper documentation. I will be happy to discuss any provision of the bill with the committee in more detail.

Again, thank you for the opportunity to testify in support of these important consumer protections.

Attachments:

Draft bill language

Debt Buyer Legislation – Add to CCPA

Sec. 1. Section 36a-645 of the general statutes is repealed and the following is substituted in lieu thereof:

As used in sections 36a-645 to 36a-647, inclusive, unless the context otherwise requires:

(1) "Consumer debtor" means any natural person residing in this state who owes a debt to a creditor.

(2) "Creditor" means (A) any person to whom a debt is owed by a consumer debtor and such debt results from a transaction occurring in the ordinary course of such person's business, or (B) any person to whom such debt is assigned. It further includes a debt buyer, as defined in this section. "Creditor" shall not include a consumer collection agency, as defined in section 36a-800, or any department or agency of the United States, this state, any other state, or any political subdivision thereof.

(3) "Debt" means an obligation or alleged obligation arising out of a transaction in which the money, property, goods or services which are the subject of the transaction are for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

(4) "Debt buyer" means a person or entity that (i) is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, or (ii) receives assignments of claims for collection purposes from a person or entity that purchased delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt, whether it collects the debt itself or hires a third party for collection or an attorney for litigation in order to collect such debt.

(5) "Original creditor" means the last person or entity to extend credit to the consumer for the purchase of goods or services, for the lease of goods, or as a loan of money. The original creditor shall be identified by the name that it used in its dealings with the consumer.

Sec. 2. Section 36a-646 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) No creditor shall use any abusive, harassing, fraudulent, deceptive or misleading representation, device or practice to collect or attempt to collect any debt.

(b) No debt buyer shall bring suit or initiate an arbitration proceeding against a consumer debtor, or otherwise attempt to collect on the debt:

(1) when the debt buyer knows, or reasonably should know, that such collection is barred by the applicable statute of limitations;

- (2) without (i) proof that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) verification of the amount of the debt allegedly owed by the debtor. For purposes of this subsection, verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original creditor's account number for the debtor, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges;
 - (3) without first giving the consumer debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor, the original creditor's account number for the debtor, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.
- (c) No debt buyer shall fail to comply with sections 3 through 5 of this act.

Sec. 3. (NEW) Requirements for suit by debt buyer

- (a) In any cause of action initiated by a debt buyer against a consumer debtor, all of the following materials shall be attached to the complaint or claim:
 - (1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed then copies of documents generated when the credit card was actually used must be attached.
 - (2) A copy of the assignment or other writing establishing that the plaintiff debt buyer is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing the transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.
 - (3) An itemization of the amount sought, including:
 - (A) the amount owed for goods or services, for the lease of goods, or the amount of credit extended;
 - (B) interest, fees, and charges imposed by the original creditor;
 - (C) interest, fees, and charges imposed by any debt buyer or other assignee of the debt, if applicable;
 - (D) attorney's fees;
 - (E) any other fees, costs, or charges sought or imposed;
 - (F) the amount and date of the last payment before default or charge-off, whichever is earlier;
 - (G) each payment credited to the debt after default or charge-off; and
 - (H) the amount the debt buyer paid for the account.

- (b) If the defendant consumer debtor appears for trial on the scheduled trial date, and the plaintiff debt buyer either fails to appear or is not prepared to proceed to trial, and the court does not find good cause for continuance, judgment shall be entered for the debtor dismissing the action with prejudice. Notwithstanding any other law, the court may award the defendant's costs and attorney fees, including lost wages and other related expenses.

Sec. 4. (NEW) Prerequisites to entering any judgment or order against debtor.

- (a) Prior to entry of a judgment or order against a consumer debtor in a complaint initiated by a debt buyer, the plaintiff shall file:
 - (1) An authenticated copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed then authenticated copies of documents generated when the credit card was actually used must be attached.
 - (2) Evidence sufficient to establish the amount and nature of the debt by business records that satisfy the requirements of section 52-180. The evidence shall include:
 - (A) the original creditor's name;
 - (B) the original creditor's account number for the debtor;
 - (C) the amount of the original debt;
 - (D) an itemization of charges and fees claimed to be owed;
 - (E) the original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated;
 - (F) an itemization of post charge-off additions, where applicable;
 - (G) the date of last payment;
 - (H) the amount of interest claimed and the basis for the interest charged;
 - (I) the amount the debt buyer paid for the debtor's account; and,
 - (J) a statement of the applicable statute of limitations period and the filing date of the case.
 - (3) An affidavit containing a statement that the plaintiff is the sole current owner of the debt, which includes or is accompanied by:
 - (A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and
 - (B) a contract of sale and exhibits that transferred ownership of the debt to the plaintiff debt buyer.
 - (4) Evidence sufficient to establish an unbroken chain of ownership interests by business records that satisfy the requirements of section 52-180. The evidence shall include:
 - (A) an affidavit by the original creditor of the facts constituting the debt, the default in payment, the sale or assignment of the debt, authenticated contract of sale and exhibits, and the amount due at the time of sale or assignment;

- (B) for each subsequent assignment or sale of the debt to another entity, including an entity related by common ownership or affiliated by corporate control, an affidavit authenticating the attached contract of sale and exhibits of the debt by the debt seller, completed by the seller or assignor; and
 - (C) proof that each assignment or other writing evidencing transfer of ownership contains the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.
- (5) An affidavit that states that the time period during which the debt buyer may bring suit or initiate an arbitration proceeding to collect the debt under the applicable statute of limitations, or any extension of the time period available under the statute of limitations, has not ended.
- (b) In any action on a consumer debt, if a debt buyer seeks a judgment or order against the debtor and has not complied with the requirements of this section, the court shall not enter a judgment for the debt buyer and shall dismiss the action with prejudice.
- (c) If the plaintiff debt buyer is the prevailing party in any action to collect a consumer debt, any interest on the judgment shall be at a maximum rate of interest equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. No other rate of interest on the judgment shall be permitted, including the rate provided for in the contract.

Sec. 5. (NEW) Limitations on actions for consumer debts by debt buyers.

- (a) Any action by a debt buyer for the collection of a consumer debt shall be commenced within three years of the accrual of the cause of action, which shall be the earlier of the date of charge-off or placement for collection or 180 days after the last regular payment. This period shall apply whether the claim sounds in contract, account stated, open account, or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This paragraph shall apply to all claims brought after the date of enactment of this act.
- (b) Notwithstanding the provisions of any other law, if a consumer debt has been charged-off, placed for collection, or there has not been any payment on the debt for over 180 days, any subsequent payment toward the debt shall not extend the three-year limitations period, nor shall it bar the consumer debtor from asserting any defenses to the collection of a consumer debt.
- (c) When the period within which an action may be commenced under this section has expired, the right to collect the consumer debt is extinguished as well as the remedy. No person shall attempt to collect a consumer debt after the three-year period described in subsection (a) has expired.

Sec. 6. Section 36a-647 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The commissioner may adopt such regulations in accordance with the provisions of chapter 54 as may be necessary to carry out the purposes of sections 36a-645 to 36a-647, inclusive, and sections 3 through 5 of this act including, but not limited to, specifying those acts which are deemed to be in violation of section 36a-646.

(b) The commissioner may receive and investigate complaints and may receive assurances of voluntary compliance with the provisions of sections 36a-645 to 36a-647, inclusive, and sections 3 through 5 of this act or forward such complaints to the appropriate prosecuting officials at the commissioner's discretion. No action taken by the commissioner against a creditor in accordance with section 36a-50 relieves the creditor from civil liability.

(c) Whenever the commissioner has reason to believe that any person has violated, is violating or is about to violate any provision of sections 36a-645 to 36a-647, inclusive, and sections 3 through 5 of this act or any regulation adopted under this section, the commissioner may take action against such person in accordance with sections 36a-50 and 36a-52.

(d) Nothing contained in sections 36a-645 to 36a-647, inclusive, shall be construed as a limitation upon the power or authority of the state, the Attorney General or the commissioner to seek administrative, legal or equitable relief as provided by other statutes or at common law.

Sec. 7. Section 36a-648 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) A creditor, as defined in section 36a-645, who [uses any abusive, harassing, fraudulent, deceptive or misleading representation, device or practice to] violates section 36a-646 or the regulations adopted pursuant to section 36a-647 while collecting or attempting to collect a debt [in violation of section 36a-646 or the regulations adopted pursuant to section 36a-647] shall be liable to a person who is harmed by such conduct in an amount equal to the sum of: (1) Any actual damages sustained by such person[,]; (2) if such person is an individual, such additional damages as the court may award, not less than five hundred dollars per violation and not to exceed [one] five thousand dollars per violation;[, and] (3) in the case of a class action, the amount for each named plaintiff as could be recovered under part (2) of this subsection, and an amount as the court may determine for each other class member, not exceeding the amount per person that could be recovered under part (2) of this subsection; and (4) in the case of any successful action to enforce liability under the provisions of this subsection, the costs of the action and[, in the discretion of the court,] a reasonable attorney's fee as determined by the court.

(b) If a creditor violates section 36a-646 or the regulations adopted pursuant to section 36a-647, the creditor, nor any other person who may thereafter legally seek to collect on such claim, shall not be allowed to collect any interest, service charge, attorney's fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the consumer

debtor on such claim. A creditor who is not a debt buyer may nevertheless recover from the consumer debtor the amount of the original claim or obligation.

[(b)] (c) In determining the amount of liability in an action brought pursuant to subsection (a) of this section, the trier of fact shall consider, among other relevant factors, the frequency and persistence of noncompliance by the creditor, the nature of such noncompliance and the extent to which such noncompliance was intentional. In any class action, the trier of fact shall also consider the resources of the creditor and the number of persons adversely affected.

[(c)] (d) A creditor may not be held liable in an action brought under this section if the creditor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted by the creditor to avoid any such error.

[(d)] (e) An action to enforce liability under this section may be brought in any court of competent jurisdiction not later than one year after the date on which the violation occurs.

Sec. 8. Section 37-3a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Except as provided in sections 37-3b, 37-3c, and 52-192a and Section 4 of this act, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. Judgment may be given for the recovery of taxes assessed and paid upon the loan, and the insurance upon the estate mortgaged to secure the loan, whenever the borrower has agreed in writing to pay such taxes or insurance or both. Whenever the maker of any contract is a resident of another state or the mortgage security is located in another state, any obligee or holder of such contract, residing in this state, may lawfully recover any agreed rate of interest or damages on such contract until it is fully performed, not exceeding the legal rate of interest in the state where such contract purports to have been made or such mortgage security is located.

Sec. 9. Section 42-150aa of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The holder of any contract or lease entered into on or after October 1, 1979, the subject of which is money, property or services intended to be used primarily for personal, family or household purposes and which contains a provision for payment of attorney's fees of a creditor, seller or lessor, shall not receive, claim or collect any payment for attorney's fees (1) for an attorney who is a salaried employee of such holder or (2) prior to the commencement of a lawsuit.

(b) If a lawsuit in which money damages are claimed is commenced by an attorney who is not a salaried employee of the holder of a contract or lease subject to the provisions of this

section, such holder may receive or collect attorney's fees, if not otherwise prohibited by law, of not more than fifteen per cent of the amount of any judgment which is entered.

(c) If the attorney's fees are for services rendered to an assignee or a debt buyer, as defined in Section 1 of this act, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:

- (1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.
- (2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

Sec. 10. Section 52-352a(c) of the general statutes is repealed and the following is substituted in lieu thereof:

For the purposes of this section and sections 52-352b and 52-353, the following terms shall have the following meanings:

(c) "Exempt" means, unless otherwise specified, not subject to any dispossession or taking, including any form of process or court order for the purpose of debt collection;

Sec. 11. Section 52-576 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) No action for an account, or on any simple or implied contract, or on any contract in writing, shall be brought but within six years after the right of action accrues, except as provided in subsection (b) of this section and Section 5 of this act.

